

Regular Session, 2009

# ACT No. 478

HOUSE BILL NO. 898 (Substitute for House Bill No. 142 by Representative Henry)

BY REPRESENTATIVE HENRY

## AN ACT

To amend and reenact R.S. 22:832(A) and (C)(1) and (7) and R.S. 47:6007, relative to tax credits and reductions; to provide relative to the motion picture investor tax credit; to provide for issuance of the tax credit for state-certified productions; to provide for the amount of the tax credit; to provide for the amount of payroll credit; to provide for transfers of certain credits; to provide relative to certain definitions; to provide for certain requirements and limitations; to provide relative to the promulgation of rules; to delete certain provisions relative to the tax credit for state-certified infrastructure projects; to provide for reduction in certain insurance license taxes based upon certain admitted assets; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:6007 is hereby amended and reenacted to read as follows:

§6007. Motion picture investor tax credit

A. Purpose. The primary objective of this Section is to encourage development in Louisiana of a strong capital and infrastructure base for motion picture ~~film, videotape, digital, and television program productions~~ production in order to achieve an independent, self-supporting industry. This objective is divided into immediate and long-term objectives as follows:

(1) Immediate objectives are to:

(a) Attract private investment for the production of motion pictures; ~~videotape productions, and television programs~~ in Louisiana.

(b) Develop a tax and capital infrastructure which encourages private investment. This infrastructure will provide for state participation in the form of tax

1 credits to encourage investment in state-certified productions ~~and infrastructure~~  
2 ~~projects.~~

3 (c) Develop a tax infrastructure utilizing tax credits which encourage  
4 investments in multiple state-certified ~~production and infrastructure projects~~  
5 productions.

6 (2) Long-term objectives are to:

7 (a) Encourage increased employment opportunities within this sector and  
8 increased global ~~competition~~ competitiveness with other states in fully ~~developing~~  
9 utilizing economic development options within the ~~film and video~~ motion picture  
10 industry.

11 (b) Encourage new education curricula in order to provide a labor force  
12 trained in all aspects of film and digital production.

13 ~~(c) Encourage development of a Louisiana film, video, television, and digital~~  
14 ~~production and postproduction infrastructure with state-of-the-art facilities.~~

15 B. Definitions. For the purposes of this Section:

16 (1) "Base investment" ~~shall mean the actual investment made and expended~~  
17 ~~by:~~

18 ~~(a) A state-certified production in the state as production expenditures~~  
19 ~~incurred in this state that are directly used in a state-certified production or~~  
20 ~~productions.~~

21 ~~(b) A person in the development of a state-certified infrastructure project~~  
22 means cash or cash equivalent investment made and used for production  
23 expenditures in the state for a state-certified production.

24 ~~(2) "Division" means the division of administration of the office of the~~  
25 ~~governor.~~

26 ~~(3) "Expended in the state" in the case of tangible property shall mean~~  
27 ~~property which is acquired from a source within the state and, in the case of services,~~  
28 ~~shall mean services procured and performed in the state~~ means an expenditure to  
29 lease immovable property located in the state; an expenditure as compensation for  
30 services performed in the state; or an expenditure to purchase or lease tangible

1           personal property within the state where the transaction is subject to the state sales  
2           or lease tax provisions of Title 47 of the Louisiana Revised Statutes of 1950. A  
3           transaction that is subject to the state sales or lease tax provisions of Title 47 of the  
4           Louisiana Revised Statutes of 1950 shall include transactions which are also subject  
5           to a statutory exclusion or exemption.

6                   (3) "Expenditure" means actual cash or cash equivalent exchanged for goods  
7                   or services.

8                   (4) "Headquartered in Louisiana" ~~shall mean~~ means a corporation  
9                   incorporated in Louisiana or a partnership, limited liability company, or other  
10                  business entity domiciled and headquartered in Louisiana for the purpose of  
11                  producing nationally or internationally distributed motion pictures as defined in this  
12                  Section.

13                  (5) "Motion picture" means a nationally or internationally distributed  
14                  feature-length film, video, television pilot, television series, television movie of the  
15                  week, animated feature film, animated television series, or commercial made in  
16                  Louisiana, in whole or in part, for theatrical or television viewing ~~or as a television~~  
17                  pilot. The term "motion picture" shall not include the production of television  
18                  coverage of news and athletic events.

19                  (6) "Motion picture production company" ~~shall mean~~ means a company  
20                  engaged in the business of producing nationally or internationally distributed motion  
21                  pictures as defined in this Section. Motion picture production company shall not  
22                  mean or include any company owned, affiliated, or controlled, in whole or in part,  
23                  by any company or person which is in default on a loan made by the state or a loan  
24                  guaranteed by the state, nor with any company or person who has ever declared  
25                  bankruptcy under which an obligation of the company or person to pay or repay  
26                  public funds or monies was discharged as a part of such bankruptcy.

27                  (7) "Office" means the Governor's Office of Film and Television  
28                  Development until August 15, 2006; thereafter, the term "office" means the office  
29                  of entertainment industry development in the Department of Economic Development  
30                  provided for in R.S. 51:938.1.

1           (8) "~~Payroll~~" ~~shall include all salary, wages, and other compensation,~~  
2           ~~including related benefits sourced or apportioned to Louisiana~~ means all salary,  
3           ~~wages, and other compensation, including benefits paid to an employee for services~~  
4           ~~relating to a state-certified production and taxable in this state. However, "payroll"~~  
5           ~~for purposes of the additional tax credit for Louisiana-resident payroll shall exclude~~  
6           ~~any portion of an individual salary in excess of one million dollars.~~

7           (9) "Production expenditures" means preproduction, production, and  
8           postproduction expenditures ~~directly incurred in this state that are directly used in~~  
9           ~~directly relating to~~ a state-certified production, including without limitation the  
10          following: set construction and operation; wardrobes, ~~make-up~~ makeup, accessories,  
11          and related services; costs associated with photography and sound synchronization,  
12          lighting, and related services and materials; editing and related services; rental of  
13          facilities and equipment; leasing of vehicles; costs of food and lodging; digital or  
14          tape editing, film processing, transfer of film to tape or digital format, sound mixing,  
15          special and visual effects; ~~total aggregate payroll; music, if performed, composed,~~  
16          ~~or recorded by a Louisiana musician, or released or published by a Louisiana-~~  
17          ~~domiciled and headquartered company; airfare, if purchased through a Louisiana-~~  
18          ~~based travel agency or travel company; insurance costs or bonding, if purchased~~  
19          ~~through a Louisiana-based insurance agency; or other similar production~~  
20          ~~expenditures as determined by rule and payroll.~~ This term shall not include  
21          ~~postproduction expenditures for marketing and distribution, any indirect costs, any~~  
22          ~~amounts that are later reimbursed, any~~ expenditures for marketing and distribution,  
23          non-production related overhead, amounts reimbursed by the state or any other  
24          governmental entity, costs related to the transfer of tax credits, ~~or any amounts that~~  
25          are paid to persons or entities as a result of their participation in profits from the  
26          exploitation of the production, the application fee, or state or local taxes.

27          (10) "Resident" or "resident of Louisiana" means a natural person ~~and, for~~  
28          ~~the purpose of determining eligibility for the tax incentives provided by this Chapter,~~  
29          ~~any person domiciled in the state of Louisiana and any other person.~~ A person who  
30          maintains a permanent place of abode within the state and spends in the aggregate

1 more than six months of each year within the state shall be presumed to be domiciled  
2 in the state.

3 (11) "Secretary" means the secretary of the Department of Economic  
4 Development.

5 (12) "Source within the state" means a physical facility in Louisiana,  
6 operating with posted business hours and employing at least one full-time equivalent  
7 employee.

8 (13) "State" means the state of Louisiana.

9 ~~(12) (14) "State-certified infrastructure project" shall mean a film, video,~~  
10 ~~television, and digital production and postproduction facility, and movable and~~  
11 ~~immovable property and equipment related thereto, or any other facility which~~  
12 ~~supports and is a necessary component of such proposed state-certified infrastructure~~  
13 ~~project, all as determined and approved by the office, the secretary of the Department~~  
14 ~~of Economic Development, and the division of administration under such terms and~~  
15 ~~conditions as are authorized by this Section. The term "infrastructure project" shall~~  
16 ~~not include movie theaters or other commercial exhibition facilities.~~

17 ~~(13)~~ "State-certified production" shall mean a production approved by the  
18 office and the secretary ~~of the Department of Economic Development~~ which is  
19 produced by a motion picture production company domiciled and headquartered in  
20 Louisiana and which has a viable multi-market commercial distribution plan.

21 C. Investor tax credit; specific productions and projects.

22 (1) There is hereby authorized a tax credit against state income tax for  
23 Louisiana taxpayers for investment in state-certified productions, ~~other than motion~~  
24 ~~picture production companies.~~ The tax credit shall be earned by investors at the time  
25 expenditures are made by a motion picture production company in a state-certified  
26 production. However, credits cannot be applied against a tax or transferred until the  
27 expenditures are certified by the office and the secretary ~~of the Department of~~  
28 ~~Economic Development.~~ For state-certified productions, expenditures shall be  
29 certified no more than twice during the duration of a state-certified production unless  
30 the motion picture production company agrees to reimburse the office for the costs

1 of any additional certifications. The tax credit shall be calculated as a percentage of  
2 the total base investment dollars certified per project.

3 (a) For state-certified productions approved by the office and the secretary  
4 on or after January 1, 2004, but before January 1, 2006:

5 (i) If the total base investment is greater than three hundred thousand dollars  
6 and less than or equal to eight million dollars, each taxpayer shall be allowed a tax  
7 credit of ten percent of the actual investment made by that taxpayer.

8 (ii) If the total base investment is greater than eight million dollars, each  
9 taxpayer shall be allowed a tax credit of fifteen percent of the actual investment  
10 made by that taxpayer.

11 (iii) The initial certification shall be effective for a period twelve months  
12 prior to and twelve months after the date of initial certification, unless the production  
13 has commenced, in which case the initial certification shall be valid until the  
14 production is completed.

15 (b) For state-certified productions approved by the office and the secretary  
16 on or after January 1, 2006, but before July 1, ~~2010~~ 2009:

17 (i) If the total base investment is greater than three hundred thousand dollars,  
18 each investor shall be allowed a tax credit of twenty-five percent of the base  
19 investment made by that investor.

20 (ii) To the extent that base investment is expended on payroll for Louisiana  
21 residents employed in connection with a state-certified production, each investor  
22 shall be allowed an additional tax credit of ten percent of such payroll. However, if  
23 the payroll to any one person exceeds one million dollars, this additional credit shall  
24 exclude any salary for that person that exceeds one million dollars.

25 (iii) The initial certification shall be effective for a period twelve months  
26 prior to and twelve months after the date of initial certification, unless the production  
27 has commenced, in which case the initial certification shall be valid until the  
28 production is completed.

29 (c) For state-certified productions approved by the office and the secretary  
30 on or after July 1, ~~2010~~ 2009, but before ~~July 1, 2012~~:

1 (i) If the total base investment is greater than three hundred thousand dollars,  
2 each investor shall be allowed a tax credit of ~~twenty~~ thirty percent of the base  
3 investment made by that investor.

4 (ii) To the extent that base investment is expended on payroll for Louisiana  
5 residents employed in connection with a state-certified production, each investor  
6 shall be allowed an additional tax credit of ~~ten~~ five percent of such payroll. However,  
7 if the payroll to any one person exceeds one million dollars, this additional credit  
8 shall exclude any salary for that person that exceeds one million dollars.

9 ~~(iii) The initial certification shall be effective for a period twelve months~~  
10 ~~prior to and twelve months after the date of initial certification, unless the production~~  
11 ~~has commenced, in which case the initial certification shall be valid until the~~  
12 ~~production is completed.~~

13 ~~(d) For state-certified productions approved by the office and the secretary~~  
14 ~~on or after July 1, 2012.~~

15 (i) If the total base investment is greater than three hundred thousand dollars,  
16 each investor shall be allowed a tax credit of fifteen percent of the base investment  
17 made by that investor.

18 (ii) To the extent that base investment is expended on payroll for Louisiana  
19 residents employed in connection with a state-certified production, each investor  
20 shall be allowed an additional tax credit of ten percent of such payroll. However, if  
21 the payroll to any one person exceeds one million dollars, this additional credit shall  
22 exclude any salary for that person that exceeds one million dollars.

23 ~~(iii) The initial certification shall be effective for a period twelve months~~  
24 ~~prior to and twelve months after the date of initial certification, unless the production~~  
25 ~~has commenced, in which case the initial certification shall be valid until the~~  
26 ~~production is completed.~~

27 ~~(e)~~(d) Motion picture investor tax credits associated with a state-certified  
28 production shall never exceed the total base investment in that production.

29 ~~(2)(a) Beginning July 1, 2005, and ending on January 1, 2009, there shall be~~  
30 ~~allowed a credit against state income tax for state-certified infrastructure projects~~

1           ~~which meet the criteria provided for in this Paragraph and which are approved by the~~  
2           ~~office, the secretary of the Department of Economic Development, and the division~~  
3           ~~of administration. The tax credit shall be equal to forty percent of the base~~  
4           ~~investment expended in this state on such project which is in excess of three hundred~~  
5           ~~thousand dollars. The total tax credit allowed for any state-certified infrastructure~~  
6           ~~project shall not exceed twenty-five million dollars, and the tax credit shall be earned~~  
7           ~~and may be structured as provided for in this Paragraph.~~

8                     ~~(b)(i) An infrastructure project shall be approved if it is a film, video,~~  
9                     ~~television, or digital production or postproduction facility.~~

10                    ~~(ii) However, if all or a portion of an infrastructure project is a facility which~~  
11                    ~~may be used for other purposes unrelated to production or postproduction activities,~~  
12                    ~~then the project shall be approved only if a determination is made that the multiple-~~  
13                    ~~use facility will support and will be necessary to secure production or postproduction~~  
14                    ~~activity for the production and postproduction facility and the applicant provides~~  
15                    ~~sufficient contractual assurances that:~~

16                    ~~(aa) The facility will be used as a state-of-the-art production or~~  
17                    ~~postproduction facility, or as a support and component thereof, for the useful life of~~  
18                    ~~the facility.~~

19                    ~~(bb) No tax credits shall be earned on such multiple-use facilities until the~~  
20                    ~~production or postproduction facility is complete.~~

21                    ~~(c) Tax credits for infrastructure projects shall be earned only as follows:~~

22                    ~~(i) Construction of the infrastructure project shall begin within six months~~  
23                    ~~of the initial certification provided for in Subparagraph (D)(2)(c) of this Section.~~

24                    ~~(ii) Expenditures shall be certified by the office, the secretary, and the~~  
25                    ~~division as provided for in Paragraph (D)(2) of this Section, and credits are not~~  
26                    ~~earned until such certification.~~

27                    ~~(iii) Twenty-five percent of the total base investment provided for in the~~  
28                    ~~initial certification of an infrastructure project pursuant to Subparagraph (D)(2)(d)~~  
29                    ~~of this Section shall be certified as expended before any credits may be earned.~~



1                   ~~(iv) No tax credit shall be allowed for expenditures made for any~~  
2                   ~~infrastructure project after December 31, 2008, unless fifty percent of total base~~  
3                   ~~investment provided for in the initial certification of the project pursuant to~~  
4                   ~~Subparagraph (D)(2)(d) of this Section has been expended prior to that date. The~~  
5                   ~~expenditures may be finally certified at a later date.~~

6                   ~~(v) For purposes of allowing tax credits against state income tax liability and~~  
7                   ~~transferability of the tax credits, the tax credits shall be deemed earned at the time~~  
8                   ~~the expenditures are made, provided that all requirements of this Subsection have~~  
9                   ~~been met and after the tax credits have been certified.~~

10                  ~~(d) The office, the secretary, and the division may require the tax credits to~~  
11                  ~~be taken and/or transferred in the tax period in which the credit is earned or may~~  
12                  ~~structure the tax credit in the initial certification of the project to provide that only~~  
13                  ~~a portion of the tax credit be taken over the course of two or more tax years.~~

14                  ~~(3)~~(2) The credit shall be allowed against the income tax for the taxable  
15                  period in which the credit is earned or for the taxable period in which initial  
16                  certification authorizes the credit to be taken. If the tax credit allowed pursuant to  
17                  this Section exceeds the amount of such taxes due for such tax period, then any  
18                  unused credit may be carried forward as a credit against subsequent tax liability for  
19                  a period not to exceed ten years.

20                  ~~(4)~~(3) Application of the credit.

21                  (a) All entities taxed as corporations for Louisiana income tax purposes shall  
22                  claim any credit allowed under this Section on their corporation income tax return.

23                  (b) Individuals, estates, and trusts shall claim any credit allowed under this  
24                  Section on their income tax return.

25                  (c) Entities not taxed as corporations shall claim any credit allowed under  
26                  this Section on the returns of the partners or members as follows:

27                  (i) Corporate partners or members shall claim their share of the credit on  
28                  their corporation income tax returns.

29                  (ii) Individual partners or members shall claim their share of the credit on  
30                  their individual income tax returns.

1 (iii) Partners or members that are estates or trusts shall claim their share of  
2 the credit on their fiduciary income tax returns.

3 ~~(5)~~(4) Transferability of the credit. Any motion picture tax credits not  
4 previously claimed by any taxpayer against its income tax may be transferred or sold  
5 to another Louisiana taxpayer or to the office, subject to the following conditions:

6 (a) A single transfer or sale may involve one or more transferees. The  
7 transferee of the tax credits may transfer or sell such tax credits subject to the  
8 conditions of this Subsection.

9 (b) Transferors and transferees shall submit to the office, and to the  
10 Department of Revenue in writing, a notification of any transfer or sale of tax credits  
11 within thirty days after the transfer or sale of such tax credits. The notification shall  
12 include the transferor's tax credit balance prior to transfer, a copy of any tax credit  
13 certification letter(s) issued by the office and the secretary of the Department of  
14 Economic Development and, ~~in the case of an infrastructure project, to the office, the~~  
15 ~~secretary, and the division of administration, the name of the state-certified~~  
16 ~~production or infrastructure project,~~ the transferor's remaining tax credit balance after  
17 transfer, all tax identification numbers for both transferor and transferee, the date of  
18 transfer, the amount transferred, a copy of the credit certificate, price paid by the  
19 transferee to the transferor, in the case when the transferor is a state-certified  
20 ~~production or state-certified infrastructure project,~~ for the tax credits, and any other  
21 information required by the office or the Department of Revenue. For the purpose  
22 of reporting transfer prices, the term "transfer" shall include allocations pursuant to  
23 Paragraph ~~(3)~~ (2) of this Subsection as provided by rule. The office may post on its  
24 ~~web site~~ website an average tax credit transfer value, as determined by the office and  
25 the secretary of the Department of Economic Development to reflect adequately the  
26 current average tax credit transfer value. The tax credit transfer value means the  
27 percentage as determined by the price paid by the transferee to the transferor divided  
28 by the dollar value of the tax credits that were transferred in return. The notification  
29 submitted to the office shall include a processing fee of up to two hundred dollars per  
30 transferee, and any pricing information submitted by a transferor or transferee shall

1 be treated by the office and the Department of Revenue as proprietary to the entity  
2 reporting such information and therefore confidential. However, this shall not  
3 prevent the publication of summary data that includes no fewer than three  
4 transactions.

5 (c) Failure to comply with this Paragraph will result in the disallowance of  
6 the tax credit until the taxpayers are in full compliance.

7 (d) The transfer or sale of this credit does not extend the time in which the  
8 credit can be used. The carryforward period for credit that is transferred or sold  
9 begins on the date on which the credit was ~~originally earned or, in the case of a~~  
10 ~~structured infrastructure credit, the date upon which the credit is allowed to be taken~~  
11 earned.

12 (e) To the extent that the transferor did not have rights to claim or use the  
13 credit at the time of the transfer, the Department of Revenue shall either disallow the  
14 credit claimed by the transferee or recapture the credit from the transferee through  
15 any collection method authorized by R.S. 47:1561. The transferee's recourse is  
16 against the transferor.

17 (f)(i) Beginning on and after January 1, 2007, the investor who earned the  
18 motion picture investor tax credits may transfer the credits to the office for seventy-  
19 two percent of the face value of the credits. Beginning January 1, 2009, and every  
20 second year thereafter, the percent of the face value of the tax credits allowed for  
21 transferring credits to the office shall increase two percent until the percentage  
22 reaches eighty percent. Upon the transfer, the Department of Economic  
23 Development shall notify the Department of Revenue and shall provide it with a  
24 copy of the transfer documentation. The Department of Revenue may require the  
25 transferor to submit such additional information as may be necessary to administer  
26 the provisions of this Section. The secretary of the Department of Revenue shall  
27 make payment to the investor in the amount to which he is entitled from the current  
28 collections of the taxes collected pursuant to Chapter 1 of Subtitle II, provided such  
29 credits are transferred to the office within one calendar year of certification.

1                   (ii) For projects which receive initial certification on and after July 1, 2009,  
2                   the investor who earned the motion picture investor tax credits pursuant to such  
3                   certification may transfer the credits to the office for eighty-five percent of the face  
4                   value of the credits in accordance with the procedures and requirements of Item (i)  
5                   of this Subparagraph.

6                   ~~(6)~~(5) The transferee shall apply such credits in the same manner and against  
7                   the same taxes as the taxpayer originally awarded the credit.

8                   ~~(7)~~(6) Notwithstanding any other provision of law, on or after January 1,  
9                   2006, a state-certified production which receives tax credits pursuant to the  
10                  provisions of this Chapter shall not be eligible to receive the rebates provided for in  
11                  R.S. 51:2451 through 2461 in connection with the activity for which the tax credits  
12                  were received.

13                  D. Certification and administration.

14                  (1)(a) The secretary of the Department of Economic Development and the  
15                  office shall determine through the promulgation of rules the minimum criteria that  
16                  a project must meet in order to qualify according to this Section. The secretary, the  
17                  office, and the division of administration shall determine through the promulgation  
18                  of rules the minimum criteria that a project must meet in order to qualify according  
19                  to this Section.

20                  (b) The secretary, the office, and the division of administration shall  
21                  determine, through the promulgation of rules, an appeals process in the event that an  
22                  application for or the certification of motion picture production ~~or infrastructure tax~~  
23                  ~~credits~~ tax credit is denied. The office shall promptly provide written notice of such  
24                  denial to the Senate Committee on Revenue and Fiscal Affairs and the House  
25                  Committee on Ways and Means.

26                  (c) ~~Prior to adoption~~ In addition, these rules shall be approved by the House  
27                  Committee on Ways and Means and the Senate Committee on Revenue and Fiscal  
28                  Affairs in accordance with the provisions of the Administrative Procedure Act.

29                  (d) When determining which productions ~~and infrastructure projects~~ may  
30                  qualify, the office and the secretary of the Department of Economic Development

1 ~~and, in the case of infrastructure projects, also the division of administration shall~~  
2 take the following factors into consideration:

3 (i) The impact of the production ~~or infrastructure project~~ on the immediate  
4 and long-term objectives of this Section.

5 (ii) The impact of the production ~~or infrastructure project~~ on the employment  
6 of Louisiana residents.

7 (iii) The impact of the production ~~or infrastructure project~~ on the overall  
8 economy of the state.

9 (2)(a) Application. An applicant for the motion picture investor credit shall  
10 submit an application for initial certification to the office and the secretary of the  
11 Department of Economic Development ~~and, in the case of infrastructure projects, to~~  
12 ~~the office, the secretary, and the division of administration~~ that includes the  
13 following information:

14 (i) For state-certified productions the application shall include:

15 (aa) The multi-market commercial distribution plan.

16 (bb) A preliminary budget including estimated Louisiana payroll and  
17 estimated base investment.

18 (cc) The script, including a synopsis.

19 (dd) A list of the principal creative elements, including the cast, producer,  
20 and director.

21 (ee) A statement that the production will qualify as a state-certified  
22 production.

23 (ff) Estimated start and completion dates.

24 ~~(ii) For state-certified infrastructure projects the application shall include:~~

25 ~~(aa) A detailed description of the infrastructure project.~~

26 ~~(bb) A preliminary budget.~~

27 ~~(cc) A complete detailed business plan and market analysis.~~

28 ~~(dd) Estimated start and completion dates.~~

29 (b) If the application is incomplete, additional information may be requested  
30 prior to further action by the office or the secretary of the Department of Economic

1 Development ~~or, in the case of infrastructure projects, the office, the secretary, and~~  
2 ~~the division of administration.~~ An application fee shall be submitted with the  
3 application based on the following:

4 (i) ~~0.2~~ Two-tenths of one percent times the estimated total incentive tax  
5 credits.

6 (ii) The minimum application fee is two hundred dollars, and the maximum  
7 application fee is five thousand dollars.

8 (c) The office and the secretary ~~and, in the case of infrastructure projects, the~~  
9 ~~division~~ shall submit their initial certification of a project as a state-certified  
10 ~~production or infrastructure project~~ to investors and to the secretary of the  
11 Department of Revenue indicating the total base investment which shall be expended  
12 in the state on the state-certified production ~~or state-certified infrastructure project~~  
13 ~~and, in the case of state-certified infrastructure projects, when such tax credits may~~  
14 ~~be taken or transferred.~~ The initial certification shall include a unique identifying  
15 number for each state-certified production.

16 (d) Prior to any final certification of the state-certified production ~~or~~  
17 ~~infrastructure project~~, the motion picture production company ~~or applicant for the~~  
18 ~~infrastructure project~~ shall submit to the office and the secretary ~~and, in the case of~~  
19 ~~infrastructure projects, to the office, the secretary, and the division, a cost report of~~  
20 ~~production or infrastructure project~~ an audit of the production expenditures audited  
21 ~~and~~ certified by an independent certified public accountant as determined by rule.  
22 The office and the secretary ~~and, in the case of infrastructure projects, the office, the~~  
23 ~~secretary, and the division shall review the production or infrastructure project~~  
24 ~~expenses and will~~ shall review the audit, the production expense details, and may  
25 require additional information needed to make a determination. Upon approval of  
26 the audit, the office and the secretary shall issue a final tax credit certification letter  
27 indicating the amount of tax credits certified for the state-certified production ~~or~~  
28 ~~state-certified infrastructure project~~ to the investors. The rules required by this  
29 Subparagraph shall, at a minimum, require that:

1 (i) The auditor shall be a certified public accountant licensed in the state of  
2 Louisiana and shall be an independent third party, not related to the producer.

3 (ii) The auditor's opinion shall be addressed to the party which has engaged  
4 the auditor (e.g., directors of the production company, producer of the production).

5 (iii) The auditor's name, address, and telephone number shall be evident on  
6 the report.

7 (iv) The auditor's opinion shall be dated as of the completion of the audit  
8 fieldwork.

9 (v) The audit shall be performed in accordance with auditing standards  
10 generally accepted in the United States of America and the auditor shall have  
11 sufficient knowledge of accounting principles and practices generally recognized in  
12 the film and television industry.

13 (e) In addition to the requirements of Subparagraph (d) of this Paragraph,  
14 prior to any final certification of a state-certified production or infrastructure project,  
15 the motion picture production company or infrastructure project applicant shall  
16 submit to the office a notarized statement demonstrating conformity with, and  
17 agreeing to, the following:

18 (i) To pay all undisputed legal obligations the film production company has  
19 incurred in Louisiana.

20 (ii) To publish, at completion of principal photography, a notice at least once  
21 a week for three consecutive weeks in local newspapers in regions where filming has  
22 taken place in order to notify the public of the need to file creditor claims against the  
23 film production company by a specified date.

24 (iii) That the outstanding obligations are not waived should a creditor fail to  
25 file by the specified date.

26 (iv) To delay filing a claim for the film production tax credit until the office  
27 delivers written notification to the secretary of the Department of Revenue that the  
28 film production company has fulfilled all requirements for the credit.

29 (3) The secretary of the Department of Revenue, in consultation with the  
30 office and the secretary of the Department of Economic Development ~~and, in the~~

1 ~~case of infrastructure projects, also the division of administration,~~ shall promulgate  
2 such rules and regulations as are necessary to carry out the intent and purposes of  
3 this Section in accordance with the general guidelines provided herein.

4 (4)(i) Any taxpayer applying for the credit shall be required to reimburse the  
5 office for any audits required in relation to granting the credit.

6 (ii)(aa) The production ~~or infrastructure project~~ application fee provided for  
7 in Subparagraph (2)(b) of this Subsection received by the office shall be deposited  
8 upon receipt in the state treasury. After compliance with the requirements of Article  
9 VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and  
10 Redemption Fund and prior to any money being placed into the general fund or any  
11 other fund, an amount equal to that deposited as required by this Item shall be  
12 credited by the treasurer to a special fund hereby created in the state treasury to be  
13 known as the Entertainment Promotion and Marketing Fund. The money in the fund  
14 shall be appropriated by the legislature to be used solely for promotion and  
15 marketing of Louisiana's entertainment industry.

16 (bb) The money in the fund shall be invested by the treasurer in the same  
17 manner as money in the state general fund and interest earned on the investment of  
18 the money shall be credited to the fund after compliance with the requirements of  
19 Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond  
20 Security and Redemption Fund. All unexpended and unencumbered money in the  
21 fund at the end of the year shall remain in the fund.

22 (5) A motion picture production company applying for the additional credit  
23 for the employment of Louisiana residents must remit a schedule to the Department  
24 of Revenue, in a machine-sensible format approved by the secretary of the  
25 Department of Revenue, that includes the following information: the names of all  
26 persons who received salary, wages, or other compensation for services performed  
27 in Louisiana in connection with the state-certified production, and the address,  
28 taxpayer identification number, permanent address of, and the amount of  
29 compensation for services performed in Louisiana received by each such person.



1           (6) With input from the Legislative Fiscal Office, the office shall prepare a  
2           written report to be submitted to the Senate Committee on Revenue and Fiscal  
3           Affairs and the House of Representatives Committee on Ways and Means no less  
4           than sixty days prior to the start of the Regular Session of the Legislature in 2007,  
5           and every second year thereafter. The report shall include the overall impact of the  
6           tax credits, the amount of the tax credits issued, the number of net new jobs created,  
7           the amount of Louisiana payroll created, the economic impact of the tax credits and  
8           film industry, ~~the amount of new infrastructure that has been developed in the state,~~  
9           and any other factors that describe the impact of the program.

10           (7) ~~Either the~~ The Department of Economic Development or the Department  
11           ~~of Revenue may audit the cost report~~ may request an additional audit of the  
12           expenditures submitted by the motion picture production company at the cost of the  
13           motion picture production company.

14           (8) As a condition for receiving certification of tax credits under this Section,  
15           state-certified productions may be required to display an animated state brand or  
16           logo, or both, which includes a fleur de lis as prescribed by the secretary of the  
17           Department of Economic Development as long as the animated state brand or logo  
18           is not contrary to any rule or regulation of the Federal Communications Commission.

19           E. Recapture of credits. If the office finds that monies for which an investor  
20           received tax credits according to this Section are not invested in and expended with  
21           respect to a state-certified production within twenty-four months of the date that such  
22           credits are earned, ~~and with respect to a state-certified infrastructure project also~~  
23           ~~within the time provided for in Paragraph (C)(2) of this Section,~~ then the investor's  
24           state income tax for such taxable period shall be increased by such amount necessary  
25           for the recapture of credit provided by this Section.

26           F. Recovery of credits by Department of Revenue. (1) Credits previously  
27           granted to a taxpayer, but later disallowed, may be recovered by the secretary of the  
28           Department of Revenue through any collection remedy authorized by R.S. 47:1561  
29           and initiated within three years from December thirty-first of the year in which the  
30           twenty-four-month investment period specified in Subsection E of this Section ends.

(2) The only interest that may be assessed and collected on recovered credits is interest at a rate three percentage points above the rate provided in R.S. 9:3500(B)(1), which shall be computed from the original due date of the return on which the credit was taken.

(3) The provisions of this Subsection are in addition to and shall not limit the authority of the secretary of the Department of Revenue to assess or to collect under any other provision of law.

Section 2. R.S. 22:832(A) and (C)(1) and (7) are hereby amended and reenacted to read as follows:

## §832. Reduction of tax when certain investments are made in Louisiana

A. The amount of the license payable shall be reduced from the amount otherwise fixed in this Part if the payer files a sworn statement with the annual report required by this Part showing as of ~~December thirty-first of the~~ the end of each fiscal quarter reporting period that at least the following amounts of the total admitted assets of the payer, less assets in an amount equal to the reserves on its policies issued in foreign countries in which it is authorized to do business and which countries require an investment therein as a condition of doing business, are invested and maintained in qualifying Louisiana investments as hereinafter defined in Subsection C of this Section. The amount of tax credit granted shall be the average of the percentage of qualifying Louisiana Securities held at the end of each fiscal quarter for the fiscal year.

\* \* \*

C. For the purposes of this Part, "a qualifying Louisiana investment" is hereby defined as:

(1) Certificates of deposit issued in Louisiana by any bank or savings and loan association or savings bank, any of which are operating in the state of Louisiana or a trust company operating in the state of Louisiana with a main office or one or more branches where the trust company holds such funds in trust and invests them

\* \* \*

Section 4. This Act shall become effective upon signature by the governor or, if not by the governor, upon expiration of the time for bills to become law without signature governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If by the governor and subsequently approved by the legislature, this Act shall become ve on the day following such approval.

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_